

LAW OFFICES OF JAMES J. CUTRO, PC

1199 Route 22 East, Suite 304
Mountainside, New Jersey 07092
Tel (908) 408-5600
Fax (908) 408-5620
Attorneys for Defendants
JAMES J. CUTRO

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

-----	X
LAIFUNG LEE,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
YAMATO SUSHI, LLC; JEFF ZHANG;	:
BRYAN LIN; LIU SEAN ZHI JIAN; JOHN	:
DOES 1-10; and XYZ CORP. 1-10,	:
	:
Defendants.	:
-----	X

17 Civ. 4322 (FLW)(TJB)

Amended Answer

Electronically Filed

Defendants, **YAMATO SUSHI, LLC, LIU SEAN ZHI JIAN, JEFF ZHANG, BRYAN LIN**, through their attorneys, the Law Offices of James J. Cutro, PC, for their answer to the FLSA Complaint and Jury Demand (the “complaint”), state as follows:

INTRODUCTION

1. Defendants need not respond to this paragraph as paragraph 1 of the complaint contains no factual allegations but merely legal conclusions and therefore respectfully refers all issues of law to this Court for determination.

JURISDICTION AND VENUE

2. Defendants need not respond to this paragraph as paragraph 2 of the complaint contains no factual allegations but merely legal conclusions and therefore respectfully refers all issues of law to this Court for determination.

3. Defendants need not respond to this paragraph as paragraph 3 of the complaint contains no factual allegations but merely legal conclusions and therefore respectfully refers all issues of law to this Court for determination.

4. Defendants need not respond to this paragraph as paragraph 4 of the complaint contains no factual allegations but merely legal conclusions and therefore respectfully refers all issues of law to this Court for determination.

THE PARTIES

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the complaint as to Plaintiff's residence.

6. Admit allegations contained in paragraph 6 of the complaint

7. Deny each and every allegation contained in paragraph 7 of the complaint.

8. Deny each and every allegation contained in paragraph 8 of the complaint.

9. Admit allegations contained in paragraph 9 of the complaint.

10. Defendants need not respond to this paragraph as paragraph 10 of the complaint contains no factual allegations.

11. Deny each and every allegation contained in paragraph 11 of the complaint.

12. Deny each and every allegation contained in paragraph 12 and respectfully refers all issues of law to this Court for determination.

13. Deny each and every allegation contained in paragraph 13 and respectfully refers all issues of law to this Court for determination.

14. Deny each and every allegation contained in paragraph 14 and respectfully refers all issues of law to this Court for determination.

MATERIAL FACTS

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the complaint.

21. Deny each and every allegation contained in paragraph 21 of the complaint.

22. Deny each and every allegation contained in paragraph 22 of the complaint.

23. Deny each and every allegation contained in paragraph 23 of the complaint.

24. Deny each and every allegation contained in paragraph 24 of the complaint.

25. Deny each and every allegation contained in paragraph 25 of the complaint.

26. Admit the allegations contained in paragraph 26 of the complaint.

27. Deny each and every allegation contained in paragraph 27 of the complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the complaint.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the complaint.

31. Deny each and every allegation contained in paragraph 31 of the complaint.

32. Deny each and every allegation contained in paragraph 32 of the complaint.

33. Deny each and every allegation contained in paragraph 33 of the complaint.

**ANSWERING PLAINTIFF'S FIRST COUNT-VIOLATION OF THE
FAMILY MEDICAL AND LEAVE ACT**

34. Defendants repeat each and every response to the allegations contained in paragraphs 1 through 33 of the complaint as same are re-alleged in paragraph 34 of the complaint.

35. Defendants need not respond to paragraph 35 of the complaint because it contains no factual allegations.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the complaint and respectfully refers all issues of law to this Court for determination.

38. Deny each and every allegation contained in paragraph 38 of the complaint.

39. Deny each and every allegation contained in paragraph 39 of the complaint.

40. Deny each and every allegation contained in paragraph 40 of the complaint.

41. Deny each and every allegation contained in paragraph 41 of the complaint.

42. Deny each and every allegation contained in paragraph 42 of the complaint.

Deny that plaintiff is entitled to any relief requested in the WHEREFORE clause.

ANSWERING PLAINTIFF'S SECOND COUNT – FLSA RETALIATION

43. Defendants repeat each and every response to the allegations contained in paragraphs 1 through 42 of the complaint as same are re-alleged in paragraph 43 of the complaint.

44. Defendants need not respond to paragraph 44 of the complaint because it contains no factual allegations.

45. Deny each and every allegation contained in paragraph 45 of the complaint and respectfully refers all issues of law to this Court for determination.

46. Deny each and every allegation contained in paragraph 46 of the complaint and respectfully refers all issues of law to this Court for determination.

47. Deny each and every allegation contained in paragraph 47 of the complaint.

Deny that plaintiff is entitled to any relief requested in the WHEREFORE clause.

ANSWERING PLAINTIFF'S COUNT III -- FLSA MINIMUM WAGE

48. Defendants repeat each and every response to the allegations contained in paragraphs 1 through 47 of the complaint as same are re-alleged in paragraph 48 of the complaint.

49. Deny each and every allegation contained in paragraph 49 of the complaint and respectfully refers all issues of law to this Court for determination.

50. Deny each and every allegation contained in paragraph 50 of the complaint and respectfully refers all issues of law to this Court for determination.

51. Deny each and every allegation contained in paragraph 51.

52. Deny each and every allegation contained in paragraph 52 of the complaint and respectfully refers all issues of law to this Court for determination.

53. Deny each and every allegation contained in paragraph 53 of the complaint and respectfully refers all issues of law to this Court for determination.

54. Deny each and every allegation contained in paragraph 54 of the complaint and respectfully refers all issues of law to this Court for determination.

Deny that plaintiff is entitled to any relief requested in the WHEREFORE clause.

ANSWERING PLAINTIFF'S COUNT FOUR -- FLSA OVERTIME

55. Defendants repeat each and every response to the allegations contained in paragraphs 1 through 54 of the complaint as same are re-alleged in paragraph 55 of the complaint.

56. Deny each and every allegation contained in paragraph 56 of the complaint and respectfully refers all issues of law to this Court for determination.

57. Deny each and every allegation contained in paragraph 57 of the complaint and respectfully refers all issues of law to this Court for determination.

58. Deny each and every allegation contained in paragraph 58 of the complaint and respectfully refers all issues of law to this Court for determination.

59. Deny each and every allegation contained in paragraph 59 of the complaint and respectfully refers all issues of law to this Court for determination.

60. Deny each and every allegation contained in paragraph 60 of the complaint and respectfully refers all issues of law to this Court for determination.

61. Deny each and every allegation contained in paragraph 61 of the complaint and respectfully refers all issues of law to this Court for determination.

Deny that plaintiff is entitled to any relief requested in the WHEREFORE clause.

ANSWERING PLAINTIFF'S COUNT FIVE
NJ W&H MINIMUM WAGE

62. Defendants repeat each and every response to the allegations contained in paragraphs 1 through 61 of the complaint as same are re-alleged in paragraph 62 of the complaint.

63. Deny each and every allegation contained in paragraph 63 of the complaint and respectfully refers all issues of law to this Court for determination.

64. Deny each and every allegation contained in paragraph 64 of the complaint and respectfully refers all issues of law to this Court for determination.

65. Deny each and every allegation contained in paragraph 65 of the complaint and respectfully refers all issues of law to this Court for determination.

Deny that plaintiff is entitled to any relief requested in the WHEREFORE clause.

ANSWERING PLAINTIFF'S COUNT SIX – NJ W&H OVERTIME

66. Defendants repeat each and every response to the allegations contained in paragraphs 1 through 65 of the complaint as same are re-alleged in paragraph 66 of the complaint.

67. Deny each and every allegation contained in paragraph 67 of the complaint and respectfully refers all issues of law to this Court for determination.

68. Deny each and every allegation contained in paragraph 68 of the complaint and respectfully refers all issues of law to this Court for determination.

69. Deny each and every allegation contained in paragraph 69 of the complaint and respectfully refers all issues of law to this Court for determination.

ANSWERING PLAINTIFF'S PRAYER FOR RELIEF CLAUSE

Deny that plaintiff is entitled to the relief requested therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

Plaintiff does not state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

Defendant **LIU SEAN ZHI JIAN** is not a proper party to this action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Defendant **LIU SEAN ZHI JIAN** is not an employer under the New Jersey State Wage and Hour Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

Defendant **LIU SEAN ZHI JIAN** is not an employer under the Fair Labor Standards Act.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

Defendant **LIU SEAN ZHI JIAN** is not an employer under the Family Medical Leave Act and not subject to individual liability under the FMLA.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by doctrines of waiver and estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate her damages.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

Any alleged deductions from compensation were lawful deductions as authorized under the New York Jersey Wage and Hour Law and the FLSA.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

Defendant, **YAMATO SUSHI, LLC** is not an employer under the Family Medical Leave Act because it does not employ the statutory required number of employees.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims against Defendants under the FMLA are frivolous under Rule 11 of the Fed.R.Civ.P. because Defendant, **YAMATO SUSHI, LLC**, is not an employer under the Family Medical Leave Act where it does not employ the statutory required number of employees and plaintiff's counsel was advised of this fact, and Defendants, **LIU SEAN ZHI JIAN, JEFF ZHANG, BRYAN LIN** are similarly neither employers under the Family Medical Leave Act nor subject to individual liability under the FMLA. **THIS STATEMENT HEREIN CONSTITUTES NOTICE TO DEFENDANTS TO BOTH PLAINTIFF AND HER COUNSEL UNDER FED.R.CIV.P. RULE 11 TO DISMISS THE FRIVOLOUS FMLA CLAIMS IN COUNT I AND II OR DEFENDANTS WILL FILE AT THE CONCLUSION OF THE ACTION A**

**MOTION UNDER RULE 11 AGAINST YOUR FIRM AND YOUR CLIENT
SEEKING SANCTIONS IN THE FORM OF ITS ATTORNEYS FEES AND
COSTS IN DEFENDING THESE PATENTLY FRIVOLOUS CLAIMS.**

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

At all times relevant hereto, Defendants acted in good faith and have not violated any rights which may be secured by Plaintiff under federal, state or local laws, rules, regulations or guidelines.

AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE

Defendants did not willfully commit any alleged violations of the Fair Labor Standards Act or the New Jersey Wage and Hour Law.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims under the Fair Labor Standards Act and New Jersey Wage and Hour Laws are in whole, or in part, barred by the statute of limitations.

WHEREFORE, defendants respectfully request that plaintiff's complaint be dismissed and defendants be awarded their reasonable attorney's fees and costs in defending this action.

Dated: September 13, 2018

Respectfully submitted,
LAW OFFICES OF JAMES J. CUTRO, PC

By: _____
James J. Cutro
1199 Route 22 East, Suite 304
Mountainside, New Jersey 07092
Tel (908) 408-5600
Fax (908) 408-5620
Attorneys for Defendants

To: Heng Weng, Esq.
Wang Gao & Associates, PC
36 Bridge Street
Metuchen, NJ 08840
Attorneys for Plaintiff